

**United States Department of Labor
Employees' Compensation Appeals Board**

JEAN CONRADSON, Appellant

and

**U.S. POSTAL SERVICE, POST OFFICE,
Fort Myers, FL, Employer**

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**Docket No. 04-1098
Issued: April 6, 2005**

Appearances:

*Michelle Erin Berthiaume, Esq., for the appellant
Office of Solicitor, for the Director*

Case Submitted on the Record

DECISION AND ORDER

Before:

COLLEEN DUFFY KIKO, Member
WILLIE T.C. THOMAS, Alternate Member
MICHAEL E. GROOM, Alternate Member

JURISDICTION

On March 18, 2004 appellant filed a timely appeal from the Office of Workers' Compensation Programs' merit decision dated September 25, 2003, which denied her claim for an employment-related emotional condition. She also filed a timely appeal from a January 27, 2004 nonmerit decision denying her request for reconsideration. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits and nonmerits of this case.

ISSUES

The issues are: (1) whether appellant sustained an emotional condition in the performance of duty causally related to factors of her federal employment; and (2) whether the Office properly denied appellant's request for reconsideration pursuant to 5 U.S.C. § 8128(a).

FACTUAL HISTORY

On June 17, 2003 appellant, then a 69-year-old rural letter carrier, filed an occupational disease claim alleging that she sustained an emotional condition causally related to her federal employment. She alleged that her federal employment required her to meet "specific and exacting" schedules which caused a psychological illness that was manifested with physical

symptoms. Appellant indicated that, due to stress, she could not sleep, was nervous and sad and experienced panic attacks, anxiety, headaches, diarrhea, nausea and cold sweats. She contended that management engaged in verbal abuse, had an insensitive attitude and would aggravate, intimidate and belittle her. She also alleged that management personnel told vicious lies and were dishonest. Appellant alleged that a supervisor, whom she did not identify by name, shook a finger in her face, was loud and made her feel like “dirt under his feet.” She also stated that a supervisor would follow her on her route.

Appellant indicated that one time after she was sick and returned to work, her supervisor stated that she knew that appellant was not sick and that everyone talked about the day appellant stated that she did not feel good. Appellant alleged that when her jeep broke down and she called her supervisor, Maureen Stewart, to ask if someone could deliver the route, her supervisor stated no. Appellant noted that she waited for a tow truck for three hours. She noted that Ms. Stewart told her that she should rent a car while her jeep was being fixed but that she refused because it would be unsafe. Appellant alleged that management made her feel like she did not want to do her job. On another occasion when her jeep broke down and she could not deliver parcels, she asked her supervisor if someone could help her. Her supervisor stated yes but advised that appellant would not be paid. In May 2001, when appellant came back to get her express mail ready for delivery, two supervisors “jumped all over” her in front of the other employees about why she was delivering three zones. Appellant asked to have weeds cut along her route because of snakes, but was told that she would have to put in a work order and that maintenance did not cut the weeds. She alleged that personnel required her to fill out forms with her employment information and told her that she would have to find the information to complete the forms on her own. Finally, appellant alleged that on one occasion her supervisor stated that she had 100 outgoing pieces, but when appellant counted, it was determined that it was 213, after which the supervisor changed her sheet.

Appellant also submitted notes dated November 29, 2002 to through June 12, 2003 by Dr. Kenneth A. Berdick, a Board-certified internist. In his note dated June 12, 2003, Dr. Berdick indicated that appellant was out on sick leave due to stress-related anxiety and that she was being referred to a psychiatrist. Appellant also submitted notes by a physician’s assistant dated December 5, 2001 and February 27, 2003.

By letter dated July 25, 2003, the Office requested that appellant submit further evidence and address any possible witnesses, whether her job required her to meet deadlines, quotas or to accomplish tasks within a time frame, her prior emotional conditions, and information with regard to her family life. By letter received on August 22, 2003, appellant indicated that there was a union provision that if a carrier was unable to finish her route she could lose a day’s pay. However, she indicated that this was not always enforced. She further noted that sometimes supervisors have paid rural carrier assistants to help a carrier or let a carrier use a postal vehicle to do their route. Appellant stated that on the date she had trouble with her jeep, she went home feeling nauseous, stomach pain, headache, heart pounding and could not stop crying. She alleged that her supervisor tried to cheat her on mail count. Appellant also indicated, “Everyday I had to complete my route in time to meet lost mail truck no matter how much mail there was or what the weather conditions were.” She noted that she has not received treatment yet, but was evaluated by a psychiatrist and has been given a sleeping pill and tranquilizer.

In a letter dated August 4, 2003, Ms. Stewart responded to appellant's allegations. She noted that many of appellant's allegations were not specific and did not identify names or dates. Ms. Stewart noted that in May 2003 schedules and mail delivery were examined and there were changes made in the distribution and delivery, which were discussed with all carriers. She noted that rural carriers were responsible for furnishing all necessary vehicle equipment for the prompt handling of the mail unless the vehicle was furnished by the employer. Ms. Stewart noted that, if an employee could not complete a route, she had to take leave for that day, as the employing establishment did not pay rural carriers for partial days. With regard to trimming the weeds, Ms. Stewart indicated that she took care of this as soon as it was brought to her attention. She noted that no one intentionally counted mail incorrectly and that they had a very good mail count. Ms. Stewart also noted that when appellant's vehicle broke down she was reminded that, pursuant to the contract, she would have to take leave for the whole day and that the replacement would be paid. She indicated that another supervisor had questioned appellant about the jeep breakdown and did not laugh at her. Appellant was questioned as to why she came back to work when it was standard operating procedure to sign over accountables to the carrier that took over the route. Ms. Stewart indicated that the form appellant was asked to complete was completed by every career employee at the time of her hire or, in appellant's case, her conversion to career, which occurred on March 9, 2002. Ms. Stewart noted that estimated dates would have been acceptable, but that appellant refused to complete the form until she had the exact date and that she was never told to get the information herself.

By decision dated September 25, 2003, the Office denied appellant's claim, finding that she had not established an emotional condition related to compensable factors of her federal employment.

By letter dated November 6, 2003, appellant, through her attorney, requested reconsideration. She submitted a June 16, 2003 report from Dr. Frederick W. Schaerf, a Board-certified psychiatrist, who indicated that she had an adjustment disorder with depressed and anxious features and that appellant was unable to work at this time. Appellant also submitted notes from a licensed social worker and a report of an emergency room visit to Lee Memorial Health System, at which time she complained of flu-like symptoms.

By decision dated January 24, 2004, the Office denied appellant's request for reconsideration without reviewing the case on the merits. The Office noted that the evidence submitted on reconsideration consisted of medical reports and that before medical evidence could be taken into consideration appellant must first establish that compensable events actually occurred. Accordingly, the Office determined that the evidence submitted was not sufficient to warrant review in that it was not relevant to the issue upon which appellant's case was denied.

LEGAL PRECEDENT

To establish an emotional condition causally related to factors of her federal employment, appellant must submit: (1) factual evidence identifying and supporting employment factors or incidents alleged to have caused or contributed to her condition; (2) rationalized medical evidence establishing that she has an emotional condition or psychiatric disorder; and

(3) rationalized medical opinion evidence establishing that her emotional condition is causally related to the identified compensable employment factors.¹

Workers' compensation law does not apply to each and every injury or illness that is somehow related to one's employment. There are situations where an injury or illness has some connection with the employment, but nevertheless, does not come within the purview of workers' compensation. When disability results from an emotional reaction to regular or specially assigned work duties or a requirement imposed by the employment, the disability is deemed compensable. Disability is not compensable, however, when it results from factors such as an employee's fear of a reduction-in-force or frustration from not being permitted to work in a particular environment or to hold a particular position.² Perceptions and feelings alone are not compensable. To establish entitlement to benefits, a claimant must establish a basis in fact for the claim by supporting his allegations with probative and reliable evidence.³

ANALYSIS

To establish entitlement to benefits, appellant must establish a factual basis for the claim by supporting the allegations with probative and reliable evidence.⁴ Most of her allegations were unsubstantiated in that witness statements were not submitted. Appellant did not provide the dates or identities regarding many of her allegations. Accordingly, the Board finds that appellant has not established that the mail was counted improperly, that a supervisor "jumped all over" her in front of other employees, that management told personal lies or were dishonest, or that a supervisor shook his finger in appellant's face. Furthermore, whether the weeds were trimmed in a timely fashion is not a factor of appellant's employment as it does not relate to appellant's specific work duties or to requirements of employment and does not fall under the Federal Employees' Compensation Act's coverage.⁵

Several of appellant's allegations fall into the category of administrative or personnel actions. As a general rule, a claimant's reaction to administrative or personnel matters falls outside the scope of the Act.⁶ However, to the extent the evidence demonstrates that the employing establishment either erred or acted abusively in discharging its administrative or personnel responsibilities, such action will be considered a compensable employment factor.⁷ Appellant alleged that a supervisor questioned her use of sick leave and stated that everyone

¹ See *Kathleen D. Walker*, 42 ECAB 603 (1991). Unless a claimant establishes a compensable factor of employment, it is unnecessary to address the medical evidence of record. *Garry M. Carlo*, 47 ECAB 299, 305 (1996).

² *Lillian Cutler*, 28 ECAB 125 (1976).

³ *Ruthie M. Evans*, 41 ECAB 416 (1990).

⁴ *Barbara E. Hamm*, 45 ECAB 843, 851 (1994).

⁵ See *James E. Norris*, 52 ECAB 93 (1999); *Margaret S. Krzycki*, 43 ECAB 496 (1992).

⁶ *Id.*

⁷ *Id.*

knew she was not sick. There is no evidence to support her allegations. There is no evidence that the employing establishment acted abusively with regard to its request that appellant complete certain forms. The employing establishment denied that it ever told appellant that she would have to get the information herself. Accordingly, there is no evidence that the employing establishment acted abusively with regard to these matters.

Appellant also alleged “specific and exacting” schedules caused her emotional condition. When asked to elaborate, she stated: “Everyday I had to complete my route in time to meet lost mail truck no matter how much mail there was or what the weather conditions were.” Again, appellant’s allegation was very general and nonspecific of the times or dates of such occurrences. Her allegations are not substantiated by sufficient factual information supporting her contentions.⁸

The Board notes, however, that appellant’s difficulties with her jeep, which was used while in the performance of employment duties, is a factor of employment and, therefore, compensable. Appellant noted that she had to wait three hours for a tow truck when her jeep broke down. She alleged that when she went home that day she experienced nausea, stomach pains, headaches, heart pounding and could not stop crying. Because rural carriers use their own transportation to deliver their routes, which is a benefit to the employer, they are in the performance of their duties when driving to and from their route.⁹ In this case, the employing establishment noted that appellant was not paid if she could not continue her route due to problems with her vehicle. However, it is uncontested that her jeep broke down while she was in the process of delivering the mail, at a time she was performing the work of her employer. As her job required her to use her vehicle to perform her federal duties, this is a compensable factor of employment.

As appellant has established a compensable employment factor, the Office must base its decision on an analysis of the medical evidence.¹⁰ As the Office found that there were no compensable employment factors, it did not analyze the medical evidence. The case will be remanded to the Office for this purpose.¹¹ After such further development as deemed necessary, the Office shall issue an appropriate decision in this matter.

In light of the Board’s holding with respect to the first issue, the Board need not address the remaining issue of whether the Office properly denied appellant’s request for reconsideration.

⁸ See *Bobbie D. Daly*, 53 ECAB 691 (2002).

⁹ See *Kathryn A. Tuel-Gillem*, 52 ECAB 451, 453 (2001).

¹⁰ *Robert Bartlett*, 51 ECAB 664 (2000).

¹¹ *Id.*

CONCLUSION

Accordingly, the Board finds that appellant established a compensable factor of federal employment. The case is remanded for development of the medical evidence in conformance of this decision.

ORDER

IT IS HEREBY ORDERED THAT the decisions of the Office of Workers' Compensation Programs' dated January 24, 2004 and September 25, 2003 are set aside. The case is remanded for further proceedings consistent with this decision of the Board.

Issued: April 6, 2005
Washington, DC

Colleen Duffy Kiko
Member

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member